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Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Visit to Ukraine undertaken from 19 to 25 May and from 5 to 9 September 2016: observations and recommendations addressed to the State party

Report of the Subcommittee*

Addendum

Replies of Ukraine**, ***

* In accordance with article 16 (1) of the Optional Protocol, the report of the Subcommittee was transmitted confidentially to the State party on 3 February 2017. On 27 April 2017, Ukraine requested the Subcommittee to publish the report, in accordance with article 16 (2) of the Optional Protocol.

** On 20 February 2018, Ukraine requested the Subcommittee to publish the replies, in accordance with article 16 (2) of the Optional Protocol.

*** The present document is being issued without formal editing.

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I. Introduction

1. In the period on May 19–25, 2016 and on September 5–9, 2016 the United Nations Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter referred as to — Subcommittee) undertook official visit to Ukraine. On 3 February 2017, Ukrainian Government received the Report of Subcommittee and subsequently decided to permit its publication.

2. The Ministry of Justice as a key Governmental authority in charge of cooperation with Subcommittee involved all relevant state agencies in the process of Report adjustment.

3. Response of Ukrainian Government includes information on implementation of Subcommittee recommendations. Responses to recommendations are given in the same order as they were mentioned in the Report.

Subcommittee recommendations

10. **The Subcommittee requests that the Ukrainian authorities reply within six months of the date of transmittal of the present report, giving an account of the actions taken and a road map for full implementation of the recommendations contained herein.**

11. **The Subcommittee recommends that the State party include in its reply an account of how recommendations will be implemented both in specific institutions and, where appropriate, at the general policy level. It also recommends that, in its reply, the State party include proposals for ways in which the Subcommittee could provide further assistance and advice in furtherance of its mandate under article 11 of the Optional Protocol.**

The response of Ukrainian Government

4. Subcommittee's recommendations concerning complaint mechanisms for sentenced and remand prisoners, informing about rights, access to legal aid, conducting confidential medical examinations and recording of injuries, introduction of registration mechanisms of sentenced and remand prisoners, introduction of individual risk assessment for prisoners sentenced to life imprisonment are reflected in the draft new Internal Regulations of Penitentiary Institutions, draft new Internal Regulations of Pre-Trial Detention Centres and draft Concept of Reformation of the State Criminal Enforcement Service of Ukraine (hereinafter referred to as — SCES).

5. Subcommittee's recommendations on informing detained persons about their rights as detainees during apprehension and placement to the police temporary holding facilities, access to legal aid and confidential communication with lawyers, conducting medical examinations of detainees, communication between detainees and their relatives and complaint mechanisms are reflected by the National Police (hereinafter referred to as — NP) in the draft Internal Regulations of Temporary Holding Facilities.

6. Mentioned drafts are at the stage of inter-agency consultations and must be registered in prescribed procedure at the Ministry of Justice (hereinafter referred to as — MoJ) since they relate to human rights.

7. The main national strategic document in the human rights sphere which covers measures on torture prevention and observance of prisoners' rights is the Action Plan of implementation of the National Strategy of Human Rights approved by the Government Ordinance of 23 November 2015 No. 1393.

8. Chapter 2 of the Action Plan contains paragraph 6 which provides establishing of effective system of investigation of crimes related to torture, cruel, inhuman or degrading treatment or punishment, including forced disappearance; paragraph 7 provides ensuring the efficiency of remedies for each person who suffered from improper treatment;

paragraph 8 stipulates providing of compensation of damage and rehabilitation of victims of crimes related to torture, cruel, inhuman or degrading treatment or punishment in accordance with international standards; paragraph 9 ensures measures on efficient functioning of the national preventive mechanism; paragraph 10 is directed on ensuring that convoy conditions comply with international standards; paragraph 11 concerns determination of remedies for protection against improper detention conditions.

Subcommittee recommendations

19. **Recalling that article 18 (3) of the Optional Protocol obliges States parties to provide national preventive mechanisms with the resources necessary to undertake their work, the Subcommittee recommends that the national preventive mechanism of Ukraine be provided with a budget that is sufficient to enable it to accomplish all mandated tasks. The Subcommittee recommends that such funding be provided through a separate line in the national annual budget referring specifically to the national preventive mechanism (see CAT/C/57/4, annex, and paras. 11–12). It also recommends that sufficient funds be allocated to allow the mechanism to carry out its visiting programme, to engage outside experts as and when appropriate, to increase its staffing and to regularly benefit from training, in accordance with its work plan.**

20. **In determining what constitutes a place of deprivation of liberty, the Subcommittee recommends that the State party adopt an approach that maximizes the preventive impact of the mechanism (see CAT/C/57/4, annex, and paras. 1–3). In addition, the Subcommittee recommends that the State party ensure that the mechanism has the legal authority and practical capacity to access any place where it, the mechanism, believes that people are or may be deprived of their liberty, in accordance with article 4 of the Optional Protocol.**

21. **Furthermore, the Subcommittee recommends that the State party assist the mechanism in increasing its public profile so that its mandate and work are more widely recognized and known. This might include, for example, coordinating public awareness campaigns, distributing materials on the mandate and activities of the mechanism in various languages to detention personnel, detainees and civil society, and informing associations of service users, lawyers and the judiciary of the mechanism's mandate. The Subcommittee also recommends that the State party establish an institutional means to systematically consider and discuss, with the mechanism, the implementation of the mechanism's recommendations and annual report.**

Response of Ukrainian Government

9. The National Preventive Mechanism (hereinafter referred as to — NPM) carries out monitoring visits (scheduled and unscheduled) to the places of deprivation of liberty. Scheduled visits are conducted according to an annual plan. Unscheduled visits are carried out to verify specific information about possible violations of human rights, particularly allegations of torture and ill-treatment. The NPM analyses the compliance with human rights in the places of deprivation of liberty and submits its reports to the Ombudsman for consideration.

10. In the period of 2012–2016 the NPM conducted 1,357 monitoring visits which covered more than 812 places of deprivation of liberty. Particularly, 284 visits (including 50 return visits) were conducted in 2016, confirming 19 incidents of torture.

11. In July 2017 the Office of the Ombudsman sent the letter to the MoJ notifying that certain recommendations of the Subcommittee on NPM activity require additional clarification with Subcommittee. The discussions regarding the recommendations shall happen by the initiation and participation of the Ombudsman.

12. Draft law on amending Laws of Ukraine "On preliminary detention" and "On the Security Service of Ukraine" on functioning of pre-trial detention centres is registered in the Parliament.

Subcommittee recommendation

23. **The Subcommittee welcomes the positive reforms to the legal system of Ukraine, as they are likely to help reduce the risk of torture and ill-treatment. It recommends that the State party implement the 2015 human rights action plan, including the commitments made to further develop its registry system, strengthen the national preventive mechanism and bolster the system for investigating torture and ill-treatment.**

Response of Ukrainian Government

13. Ukrainian Government continues to execute measures of the Action Plan of implementation of the National Strategy of Human Rights. Since February 2017:

- Draft law on amending Law of Ukraine "On the National Police" is developed to bring into line with international standards police powers concerning use of force, search and grounds for apprehension. After consultations the draft law will be submitted to the Government for consideration;
- IT-system "Custody records" is testing in 135 police temporary holding facilities (hereinafter referred as to — THF). Noted IT-system provides registration of detainees, recording of procedural actions, including fixation of injuries and provision of medical aid to detainees. Draft Order of Interior Ministry is developed on approval the Instruction of formation the IT-system "THF custody records" within Informational portal of the NP. Draft Order is currently at the stage of inter-agency consultations;
- Draft decree of the Government is developed concerning accounting of sentenced and remand prisoners to introduce electronic data base of sentenced and remand prisoners which promotes an effective activity of SCES institutions and inter-agency cooperation. Draft decree will be submitted to Government for consideration at the nearest time;
- Draft law on amending Law "On Parliamentary Commissioner for Human Rights" is developed to give additional powers to Ombudsman concerning ensuring the execution of Ombudsman's recommendations and providing possibilities to take urgent measures of reaction which are compulsory for execution by public officials. The draft law is currently being refined.

14. Ukraine has recently formally established an independent State Bureau of Investigation (hereinafter referred as to — SBI) to investigate crimes committed by high-ranking officials, judges, prosecutors and law-enforcement officers. In particular, the SBI will be investigating allegations of torture and ill-treatment by police officers and other law-enforcement agencies. The open selection process for the Head of the SBI is currently ongoing.

Subcommittee recommendation

25. **The Subcommittee reiterates its previous recommendation that provisions of the Criminal Code regarding the definition of torture should be brought into full compliance with article 1 of the Convention against Torture, thereby closing actual or potential loopholes for impunity. In addition, the Subcommittee recommends that the offence of torture be prosecuted under the provision relating to torture — rather than under those relating to abuse of power or authority — and that acts of torture and ill-treatment be made punishable by penalties commensurate with their gravity.**

Response of Ukrainian Government

15. In order to bring the crime of torture in Article 127 of the Criminal Code of Ukraine in line with the internationally accepted definition a draft law was recently prepared by the MoJ. Torture committed by public or law-enforcement officials is particularly punishable. The draft law will be presented to Government for consideration at the nearest time.

Subcommittee recommendation

27. **The Subcommittee welcomes reforms to the institutional framework in Ukraine that may contribute to improving the material conditions and the provision of services in places of detention. The Subcommittee recommends that the State party continue its programme of renovating ageing detention facilities and requests that it be provided with information concerning progress made in the framework of that programme. It also recommends that medical services in criminal justice institutions be placed under the authority of the Ministry of Health, as that would help to ensure that persons in detention receive health care that is of a standard equal to that received by persons not in detention and ensure the independence of prison medical services.**

Response of Ukrainian Government

16. The capital expenditure of 37.029 UAH for realization such state investment projects as "Completion of the reconstruction of the regime building for holding persons sentenced to life imprisonment in Poltava Colony (No. 23)", "Construction of a pre-trial detention centre in Kyiv region" and "Completion of the construction of the medical treatment in Golopristanska Colony (No. 7) within Kherson region" were provided in 2017.

17. For the purpose of enforcement of the order of the Cabinet of Ministers of Ukraine No. 1066 of October 7, 2015, the collection of pre-project proposals for the implementation of investment projects aiming at transferring Kyiv pre-trial detention centre as well as Lviv Colony (No. 19) outside the central parts of the cities of Kiev and Lviv within the framework of public-private partnership, was declared.

18. When preparing the draft law of Ukraine "On the State Budget of Ukraine for 2018", budget proposals on the capital expenditures for realization such state investment projects as "Construction of a pre-trial detention centre in Kyiv region", "Completion of the construction of the medical treatment in Golopristanska Colony (No. 7) within Kherson region", "Completion of the construction of the regime building for holding persons sentenced to life imprisonment in Vilnyanska Colony No. 11 in Zaporizhia region" as well as other projects of construction, reconstruction and capital repairs of the SCES should be taken into account.

19. Within the framework of reformation of the SCES, it is planned to remove medical service from the subordination of administrations of penitentiary institutions. Aiming to provide medical assistance to sentenced and remand prisoners, including those living with HIV, those who affected by tuberculosis and drug addicted persons at the same level as it is in society, the MoJ has developed a draft resolution of the Cabinet of Ministers of Ukraine "On the establishment of a State Institution "Health-Care Protection Centre within the SCES" as a separate entity falling within the competence of the MoJ. The abovementioned draft resolution is currently passing through the consultations procedures. "Health-Care Protection Centre within the SCES" will begin to operate from 1 January 2018.

20. After the Ministry of Healthcare (hereinafter referred as to — MoH) had developed the Concept for the Provision of Medical Aid to Sentenced and Remand Prisoners and adopted the relevant legislation, the Centre with all medical institutions of the SCES would be subordinated to it.

Subcommittee Recommendation

29. **The Subcommittee recommends that the State party strengthen the services provided to detainees in order to ensure that social assistance, such as supported living and counselling, is in place and coordinated in order to ease detainees' transition back into society and prevent their return to detention.**

Response of Ukrainian Government

21. The program "Preparation for release" is implemented within the framework of the implementation of the MoJ Order "On approval of the provisions for programs of the differentiated educational effect on sentenced prisoners" of 16 May 2016 No. 1418/5 in the penitentiary institutions. The main measures implementing during the realization of this program are:

- Organization of cooperation between institutions and subjects of social patronage during the preparation for release;
- Assistance to sentenced prisoners in receiving or restoration of personal documents;
- Provision of assistance to sentenced prisoners in establishing positive socially useful relationships;
- Provision psychological assistance to sentenced prisoners;
- Provision of legal assistance to sentenced prisoners;
- Informing of sentenced prisoners on trends and changes in socio-political, economic and legal aspects of the State and society;
- Development of knowledge, skills and abilities for living in society, in particular abilities to self-service, hygiene, care and support of health, work and professional skills and abilities, sufficient awareness of their own rights, obligations and ability to apply them;
- Realization of the program "Preparation for release" is divided into three stages: initial, main and final.

22. On the initial stage the head of social-psychological service unit of the penitentiary institution shall:

- Ascertain family relationships, existence of social ties;
- Ascertain level of education, existing job/profession and occupational qualification;
- Offer to obtain complete general secondary education or vocational education, increase educational level through distant technologies;
- Clarify conditions and procedures for application of release on parole, other grounds for release on parole or replacement of unserved part of a sentence with more lenient punishment;
- Clarify conditions and procedures for registration of pensions to sentenced prisoners;
- Study prisoner's intentions concerning his/her place of residence and employment after release.

23. During the main stage the social-psychological unit shall:

- Solve problematic issues of sentenced prisoner which were determined at the initial stage;
- Assist to sentenced prisoner in registration (restoration) of the passport, registration number of the identity card, other documents, which are necessary for employment and domestic placement after the release and qualification for a pension as well;

- Involve sentenced prisoner in receiving general secondary education and labor occupation;
- Provide sentenced prisoner with information on socio-political, economic and social life of the State and society;
- Provide sentenced prisoner who was released with information about institutions of social adaptation, their location, contacts, conditions for admission and residence in them.

24. On the final stage sentenced prisoner gets enrolled in the preparation for release courses (courses). According to the requirements of article 156 of Criminal Executive Code of Ukraine (hereinafter referred to as — CEC), courses are considered as a part of the program "Preparation for release" and organized in order to prepare sentenced prisoners for life in conditions of free society. Aiming to organize those courses, recruitment of participants is carried out who form groups of 7–12 persons, class schedule is drawing up as well. Those sentenced prisoners who have from three to six months before release and those who left with less than three months before consideration of the issue of their release on parole have the opportunity to be registered for these courses.

25. Classes are held in the form of lections, practical classes, trainings, where subjects of social patronage are involved aiming to assist sentenced prisoners who are released from imprisonment with employment and domestic placement in the place of residence which they have chosen. Classes are held in the free (from work or study) time taking into account the schedule of the day in the institution. Classes are held twice a week; duration of the class is up to one hour. Each course consists of such three modules as legal training, psychological training, healthy lifestyle and proper behaviour.

26. Currently, 8.262 sentenced prisoners participate in the program "Preparation for release". On the results of the first quarter of 2017, 3.650 prisoners have completed this program.

Subcommittee Recommendations

32. **Recalling that regular monitoring of detainees' psychological well-being is fundamental to reducing the risk of ill-treatment, the Subcommittee recommends that the State party include routine mental health screenings in medical examinations given upon entry to a place of detention and that the State party incorporate assessments of mental health in daily check-ups conducted by adequately trained personnel. The Subcommittee also recommends that the State party ensure prompt access to mental health services and programmes, including access to a psychiatrist, upon referral by staff or through self-referral.**

33. **The Subcommittee further recommends that the State party make drug rehabilitation services universally available to persons in detention and that the State party evaluate ways to improve communication and collaboration between health, psychological and social service providers in detention facilities.**

Response of Ukrainian Government

27. The provision of specialized mental health intervention to sentenced prisoners affected by mental health problems is brought into line with international requirements and regulated by the Law of Ukraine "On Psychiatric Care" of 22 February 2000 No. 1489-III.

28. Outpatient mental health care is provided in medical units, health care facilities of pre-trial detention centres and penitentiary institutions within the SCES. Inpatient mental health care is provided at a specialized psychiatric hospital within "Vilnyanska Colony No. 20", which has the capacity to 150 beds for men and 5 for women and in the psych neurological unit for male prisoners who affected by tuberculosis within the specialized tuberculosis hospital at the "Sofiivska Colony (No. 55)", which has the capacity to 15 beds.

29. Remand prisoners in pre-trial detention centres are obtained with inpatient mental health care provided in psychiatric hospitals within the MoH and outpatient mental health care provided by psychiatrists respectively.

30. 2,010 persons diagnosed for the first time were clinically tracked to the penitentiary institutions throughout 2016 (as of 2015 their number were 2,359 persons). During 2016, 4,197 people were kept under surveillance (as of 2015 their number were 4,376 people).

31. 915 persons were clinically tracked in pre-trial detention centres during 2016 (as of 2015 their number reached to 907 persons) and 988 persons were diagnosed for the first time as well (as of 2015 their number reached to 976 persons).

32. The number of sentenced prisoners dependent on narcotic substances, which were clinically tracked with a view to preventing, treatment and rehabilitation in the penitentiary institutions reached to 2,133 persons in 2016 (as of 2015 their number had risen to 1,985) and the number of drunk addict reached to 788 persons (as of 2015 their number had risen to 840). Treatment and dispensary registration of the aforementioned category of persons is conducted according to the procedure determined by the MoH.

33. Drug treatment of sentenced prisoners in the SCES institutions is provided in accordance with the order of the MoH "On approval of clinical protocols for the provision of medical assistance by the specialty "narcology" of September 21, 2009 No. 681.

34. Drug treatment units providing preventive, therapeutic and rehabilitation assistance are operated in 48 penitentiary institutions. Sentenced prisoners who need to be provided with drug treatment shall receive general supportive treatment.

35. In order to comply with the joint order of the MoH, Ministry of Interior, MoJ and the State Service of Ukraine on Drugs Control "On Approval of the Procedure for the Interaction of Health Care establishments, Internal Affairs bodies, pre-trial detention centres and penitentiary institutions to ensure the continuity of treatment with substitution maintenance therapy" of October 22, 2013 No. 821/937/1549/5/156, records are kept in all pre-trial detention centres concerning persons who received substitution maintenance therapy before being arrived to the place of detention. Upon arrival to the pre-trial detention centre of a person who received substitution maintenance therapy, he/she is registered and subsequently delivered to the regional drug dispensary for treatment to be obtained.

36. To implement the Order of the MoJ "On approval provisions concerning programs of differentiated educational impact on the convicted persons" of May 16, 2016, No. 1418/5, rehabilitation program "Drug rehabilitation" is being implemented by penitentiary institutions.

37. The main objectives of the program "Drug rehabilitation" are:

- Interaction of penitentiary institutions with public and non-governmental organizations promoting healthy lifestyles;
- Prevention of moral and psychological deformation associated with imprisonment;
- Awareness and recognition of drug dependence by sentenced prisoner, recognition of the inability to independently resist it;
- Building such constructive skills in the fight against drug addiction as skills for controlling negative emotions, feelings and states, communication (seeking assistance), creating a positive image;
- Identification of psychological mechanisms of drug dependence and the creation of appropriate protection mechanisms (changing stereotyped ineffective ways of thinking, experience and behaviour);
- Strengthening or obtaining motivation for the continuation of treatment for drug dependence, awareness of responsibility for health;
- Implementation of the program "Drug rehabilitation" is divided into three stages: initial, main and final.

38. At the initial stage it occurs the following:

- Acquisition of knowledge concerning drug dependence;
- Awareness and recognition of drug dependence by the prisoner;
- Recognition of inability to independently resist drug addiction;
- Information on medical and psychological assistance to drug-addicted persons is proposed;
- Conditions and procedures for participating in the program "Drug rehabilitation" are clarified.

39. The main part is focused on the following:

- Building such constructive skills in the fight against drug addiction as controlling negative emotions, feelings and conditions, communication (seeking assistance), creating a positive image;
- Identification of psychological mechanisms of drug dependence and the creation of appropriate protection mechanisms (changing stereotyped ineffective ways of thinking, experience and behaviour);
- Participation in psychotherapeutic programs conducting by representatives of medical and psychological services of the institution, representatives of state and non-governmental organizations.

40. The following procedures are generally taking place in the final stages:

- Strengthening motivation to continue drug treatment after being released from penitentiary institution;
- Recognition of responsibilities in maintaining good health;
- 2.177 sentenced prisoners are currently participating in program "Drug rehabilitation". According to the results of the first quarter of 2017, 636 prisoners have trained in this program.

Subcommittee recommendations

39. **The Subcommittee recommends that the State party take urgent measures to prevent and punish all acts of torture and ill-treatment occurring at the hands of, or with the consent or acquiescence of, State officials. To that end, the Subcommittee recommends that the State party: (a) investigate all allegations of torture and ill-treatment through processes that are prompt, impartial and transparent, in addition to being efficient and effective; and (b) prosecute those responsible. Persons convicted for acts of torture and ill-treatment should be sanctioned with penalties commensurate with the severity of their crimes.**

40. **The Subcommittee also recommends that allegations of torture and ill-treatment, as well as suspicions of such acts arising from observable injuries and/or medical examinations, be systematically acted upon in the same way and that those making the allegations be protected from reprisals.**

41. **The Subcommittee further recommends that the State party establish and maintain a national register of all allegations of torture and ill-treatment that includes the following information:**

(a) **The details of each allegation received;**

(b) **An indication of the institution or location where the act or condition is alleged to have taken place;**

(c) **The date when the allegation was received;**

(d) **The rationale for the decision taken in respect of the allegation and the date of that decision;**

(e) **Any action taken as a result.**

Response of Ukrainian Government

41. At the end of 2016 the Unit on Inspecting the Observance of Human Rights in Penitentiary Institutions was established within the MoJ which inspects penitentiary institutions concerning the situation with observance of human rights; conducts monitoring of the efficiency of realization legal rights and interests of sentenced and remand prisoners; organizes service investigations by the facts of extraordinary events, committed crimes, violations of human rights and freedoms during serving criminal punishments.

42. From the beginning of 2017 the Unit has conducted the inspections of 11 penitentiary institutions resulted in submission recommendations for reaction to the Interregional Departments on enforcement of criminal punishments and probation. The recommendations concerning elimination of revealed shortcomings include specific measures to be taken indicating the terms of execution. Relevant Interregional Departments, penitentiary institutions must report back on the work performed to implement the recommendations. During inspections facts of torture or ill-treatment were not revealed.

43. Similar Units were established within the structure of Interregional Departments on enforcement of criminal punishments and probation to conduct systemic and objective inspectioning of penitentiary institutions and pre-trial detention centres with a view to examine observance of human rights including on torture and ill-treatment prevention.

44. In the penitentiary system the service "Complaint" was developed and tested which enables sentenced and remand prisoners to apply to the NPM, authorities of the SCES and public prosecutor's office through sending an online complaint on e-mails of mentioned state bodies. Service "Complaint" functions through special software installed on 126 computers (tablets). As of the middle of 2017 such computers (tablets) are set at 86 penitentiary institutions and pre-trial detention centres.

45. Service "Complaint" provides tool to create an electronic complaint, send it to one or several recipients in the list, receive and review an answer.

46. According to provisions of Criminal Procedural Code of Ukraine (hereinafter referred as to — CPC) investigators of public prosecutor's office investigate crimes committed by the law-enforcement officials.

47. Ukraine has recently formally established an independent SBI to investigate crimes committed by high-ranking officials, judges, prosecutors and law-enforcement officers. In particular, the SBI will be investigating allegations of torture and ill-treatment by police officers and other law-enforcement agencies. Until the conclusion of the process of its formation, the cases of torture and ill-treatment are investigated by the investigative units of the public prosecutor's office.

48. Criminal proceedings were initiated for committing crime of torture by SCES personnel in 2016 (it was 6 in 2015 and 1 in 2014). As of mid-2017 criminal proceedings of mentioned category were not initiated.

49. On 13 January 2017 the MoJ delivered to the Interregional Departments on execution of punishments and probation an instruction regarding harmonizing the procedure of conducting medical examinations of sentenced and remand prisoners in line with requirements of international monitoring mechanisms.

50. Paragraphs 1, 2, 3, 4 of Chapter II of the Procedure for providing medical support for sentenced prisoners which approved by the General Order of the MoJ, MoH of 15.08.2014 No. 1348/5/572 clearly regulate the mechanism of fixation and registration of body injuries revealed on sentenced prisoners upon their arrival to penitentiary institution.

51. *Paragraph 2.1 of Chapter 2 of Procedure of coordination of healthcare institutions of* the SCES with general healthcare institutions on the provision of medical aid for persons

taken into custody regulates mechanism of fixation and registration of body injuries on remand prisoners upon their arrival to the pre-trial detention centres.

52. Mentioned legal acts prescribe conducting of medical examination of sentenced and remand prisoners out of sight and earshot of non-medical staff (if medical employee doesn't wish otherwise in every specific case).

53. The NP carries out preventive measures directed on prevention of torture of people during detention in police places of deprivation of liberty. Mobile unit were established within the structure of NP to ensure observance of human rights by police officials.

54. To prevent violations of human rights and to increase the level of policemen legal awareness as of the middle of 2017 the NP has carried out 486 trainings covering 12,000 policemen and 85 trainings for students, schoolboys, other citizens covering more than 2,000 people.

55. In 2017 measures are planned to upgrade the skills of 18,000 policemen through studying the range of subjects including concerning observance of human rights.

56. In order to increase professional level and exchange experience and knowledge during May-September 2017 trainings have been conducting for management of police THF and convoy units. Representatives of public prosecutor's office, regional centres for provision of free legal aid and NGOs were involved in the trainings.

57. 12 criminal proceedings were initiated for committing crime of torture by police officials in 2016 (it was 12 in 2015 and 8 in 2014). As of the mid-2017, 9 criminal proceedings were initiated by the mentioned category of crime.

58. An effective NPM was established in 2012 using the model "Ombudsman-Plus". Accordingly, the Office of the Ombudsman provides technical and organizational support to the independent monitors, proposed and trained by the National Expert Council.

59. The NPM carries out monitoring visits (scheduled and unscheduled) to the places of deprivation of liberty. Scheduled visits are conducted according to an annual plan. Unscheduled visits are carried out to verify specific information about possible violations of human rights, particularly allegations of torture and ill-treatment. The NPM analyses the compliance with human rights in the places of deprivation of liberty and submits its reports to the Ombudsman for consideration.

60. In the period of 2012–2016 the NPM conducted 1,357 monitoring visits which covered more than 812 places of deprivation of liberty. Particularly, 284 visits (including 50 return visits) were conducted in 2016, confirming 19 incidents of torture.

61. The draft law is developed concerning the reparation (compensation) to the victims of violent crimes aiming to increase the guarantees of rights to the victims of intentional violent crimes through providing them the social support in the form of compensational payment for the damage caused as a result of intentional violent criminal encroachment on the life and health. The draft law will be submitted to the consideration of the Ukrainian Government.

Subcommittee recommendation

44. **The Subcommittee recommends that the State party ensure that all detained persons are fully informed of the reasons for their arrest or confinement, as well as of their rights as detainees, as soon as they are deprived of their liberty. It also recommends that information on rights be communicated in a clear and easily understandable way, for example through posters displayed in all places of detention, including in rooms and cells, and by distributing factsheets that are comprehensive, legible and intelligible to detainees, in their own language. It further recommends that all persons deprived of their liberty be informed (for instance, through leaflets and posters) of their right to submit direct and confidential complaints to administrators in places of detention and to higher-level authorities, including to those with remedial powers, and of how in practice this can be done in a secure and confidential fashion.**

Response of Ukrainian Government

62. According to article 21 of the Law "On preliminary detention" and provisions of Internal Regulations of Pre-Trial Detention Centres administration of pre-trial detention centre is obliged:

- To inform individuals, while taking them into custody, on grounds and motives for their detention;
- To explain their right to appeal grounds and motives for their detention in court;
- To provide remand prisoners with printed clarification of articles 28, 29, 55, 56, 59, 62 and 63 of the Constitution of Ukraine, provisions of the Law "On preliminary detention" and other rights of individuals, who are taken into custody, which are established by law;
- To ensure availability in sufficient quantity of texts of Constitution of Ukraine, Criminal Code, CPC, CEC, Laws "On preliminary detention", "On Public Prosecutor's Office", "On the procedure of reparation caused to the citizen by the illegal actions of agencies conducting an inquiry, pre-trial investigation, public prosecutor's office and the court", other legal and regulatory instruments which determine the status and powers of law enforcement bodies, rights and obligations of individuals who are taken into custody, regime of custody, procedure of compensation of damages caused by unlawful actions or inactivity of law-enforcement agencies and officials of pre-trial detention centres;
- To provide the opportunity for individuals, who are taken into custody, to use mentioned texts of legal and regulatory acts and scientific and methodological literature.

63. According to article 8 of the CEC and Internal Regulations of Penitentiary Institutions sentenced prisoners have a right to receive information about their rights and obligations, procedure and conditions of execution and serving a sentence which was imposed by a court. Administration of penitentiary institution, which implements the sentence, is obliged to provide sentenced prisoners with specified information, as well as inform them with amendments of procedure and conditions of serving a sentence. MoJ designed reminder cards for sentenced and remand prisoners, their families and close relatives. Rights, obligations and responsibilities of sentenced and remand prisoners, their families and close relatives are widely disclosed in mentioned reminder cards which contain extracts from legal and regulatory acts. These reminder cards are placed in the units of social-psychological service, libraries, cells, and waiting rooms for citizens, rooms for receiving packages and rooms for short-term and long-term visits. In the units of social-psychological service of penitentiary institutions and cells of pre-trial detention centres information stands are placed with extracts from legal and regulatory acts concerning rights, obligations, responsibilities of sentenced and remand prisoners, procedures of submission of complaints with addresses and contact information of state authorities and non-governmental organizations.

64. One of priority directions of the NP activity is observance of human rights and freedoms of detainees in police THF. The NP continues the process of reformation of THF. With the entry into force of the Law of Ukraine "On the National police" closing has started of those THF that lacked minimal detention conditions, have been closed, in particular those located in a basement, lacking individual sleeping places, access to daylight or running water supply. Currently there are 150 THF remaining (in 2015 there were 380 THF in Ukraine).

65. Article 87 of the CPC expressly declares inadmissible in court any evidence obtained through unlawful means such as torture, cruel, inhuman or degrading treatment or the threat thereof or other substantial violations of human rights and freedoms. In accordance with articles 212 and 213 of the CPC, the law enforcement authorities are obliged to ensure proper treatment with the detainee, respect of his/her rights, provide an adequate medical treatment as well as record any bodily injuries or deterioration of detainee' heath by medical officer; immediately register detainee, explain the grounds for

detention, his/her rights and obligations; record all procedural activities carried out with detainee (including the time of beginning of such activities and its end) and persons who carried out such activities or were presented at the time of their conducting; give detainee the opportunity to report immediately his/her close relatives, family members or other persons about his/her detention and place of residence; communicate such information to a body which is authorized to provide free legal aid. During 2016–2017 an experiment was conducted at the territory of Kyiv and Kharkiv regions in order to inform victims, witnesses and detainees about their rights. The aim of the experiment was to hand over the reminder cards to abovementioned persons by the police officers. The analysis of the results and materials of the experiment showed positive dynamics in increasing trust towards police officers and legal awareness of Ukrainian citizens. Currently issue regarding statutory determination of such practice is under consideration.

66. In order to regulate the activity of the police duty service, as well as to fix all actions with persons who were held or invited to the police department, the Instruction concerning organization of the police duty service activity within the NP was approved on May 23, 2017. In accordance with the requirements of the mentioned Instruction, police officers are obliged to record in the relevant journals the date and time of person's transportation or his/her arrival to the police department (unit) indicating the surname, the position of the employee to whom the person was transferred or invited, as well as to hand over to the detained persons the reminder card concerning his/her rights. While being placed in THF detainees shall be communicated with their rights during the time of detention. In order to raise awareness of each person temporarily staying in THF about his/her rights and obligations, each THF is provided with information posters concerning rights of persons in the twelve common languages of the world. In addition, each THF is provided with a sticker on which the rights and responsibilities of the detained person is printed. In 2016 Memorandum on Cooperation between the NP and MoJ was concluded to consolidate efforts on prevention and revealing torture and ill-treatment, to prevent violations of rights to legal protection and free legal aid.

Subcommittee recommendation

46. **The Subcommittee recommends that the State party guarantee that, as a routine matter, all persons deprived of liberty are able to ensure that a third party of their choice is notified of where and when they have been detained from the outset of their detention.**

Response of Ukrainian Government

67. Article 213 of CPC establishes obligation of law-enforcement officials to provide detainee with an opportunity to inform his/her families, close relatives or other person about his apprehension and place or residence.

68. Article 91 of CEC foresees the obligation of administration of penitentiary institution to inform family or other close relatives of sentenced prisoner after his/her arrival to penitentiary institution. Such notification shall include address of the penitentiary institution and explanation of rights of sentenced prisoner.

69. Chapter II of Internal Regulations of Penitentiary Institutions, approved by the MoJ Order of 29.12.2014 No. 2186/5, stipulates that during three days since prisoner's arrival the administration of penitentiary institution sends a notification to families and close relatives indicating address of penitentiary institution, explanation of rights to correspondence, receiving parcels and packages, visits and making phone calls.

Subcommittee recommendations

50. **The Subcommittee recommends that the State party ensure that all detainees have access to legal counsel from the outset of their deprivation of liberty and throughout the detention period.**

51. **The Subcommittee also recommends that the State party ensure that legal advice provided through its legal aid system is prompt, professional and given in the interests of the detainee, not of the detaining authorities. Appropriate training should be provided by independent professional bodies to lawyers providing legal aid. The Subcommittee further recommends that such training be extended to include counsel representing detainees accused of crimes in connection with the armed conflict in eastern Ukraine. The Subcommittee reiterates the recommendation made in paragraph 42 above.**

52. **The State party is urged to guarantee the absolute confidentiality of communications between lawyers and their clients.**

Response of Ukrainian Government

70. In accordance with the Article 9 of the Law of Ukraine "On preliminary detention" persons taken into custody have a right to protect their rights and interests individually or with the assistance of a lawyer from the moment of detention, the right to refuse providing any explanations or evidences until lawyer arrival. According to the Article 12 of the Law of Ukraine "On preliminary detention" persons taken into custody have the right to meet with a lawyer in private, without limiting the number of visits and their duration outside hours when investigative work is being done. The administration of pre-trial detention centre must ensure the proper conditions for the visits to be kept including those that exclude the possibility of a third party to have an access to the information providing during the visit.

71. According to Articles 8, 110 of the CEC every sentenced prisoner has the right to obtain legal aid. For this purpose, prisoners may be assisted by a lawyer or other specialists in the field of law that are legally entitled to provide legal assistance in person or on behalf of a legal entity. Such right extends to sentenced prisoners who are being treated at health care establishments. At the request of a sentenced prisoner or a lawyer, private meetings may be allowed. Prisoners are provided with the opportunity to communicate with a lawyer and other specialist in the field of law inside the premises of penitentiary institution without protective glass upon their consent.

72. According to the Law of Ukraine "On free legal aid" sentenced and remand prisoners are provided with appropriate legal assistance by representatives of the Regional Centres for the Provision of Free Secondary Legal Aid and by lawyers included in the Register of Lawyers providing free secondary legal aid.

73. Aiming to execute requirements of the Law of Ukraine "On free legal aid" (Law on free legal aid) and the CPC, starting in 1 January 2013, centres for the provision free secondary legal aid (regional centers) established in all the regions of Ukraine and in Kyiv city, ensure provision of free secondary legal aid to persons prescribed in paragraphs 3–7 of part 1 of Article 14 of Law on free legal aid, particularly to:

- Persons taken under administrative detention or administrative arrest;
- Persons who according to the provisions of CPC are considered as detainee;
- Persons taken into custody;
- In cases when a lawyer engaged officially by investigator, prosecutor, investigative judge or by court to carry out a legal protection undertaken by designation or separate procedural action in criminal proceedings;
- To persons sentenced to deprivation of liberty, restriction of liberty or detention in disciplinary battalion of military officers.

74. Ensuring an early access to free secondary legal aid of persons who according to the provisions of CPC are referred to as detained persons and to whom administrative detention or administrative arrest is imposed shall be conducted by the regional centres accordingly with the Procedure of informing centres for providing free secondary legal aid about the cases of detention, administrative arrest of taking into custody (Procedure of Informing) adopted by the Cabinet of Ministers of Ukraine Decree of 28 December 2011 No. 1363 (with amendments).

75. According to the provisions of the Procedure of Informing, subjects of submission of information shall immediately after factual detention of a person (police authorities and other authorities entitled to execute detention) make a notification through mobile or fax connection to the regional centre regarding information about persons who were detained.

76. The regional centre during one hour after registration of such notification appoints a lawyer for providing free secondary legal aid to apprehended person by submitting to a lawyer an appropriate order. Appointed lawyer during one hour (or six hours in exceptional cases) from the moment of receiving an order arrives to apprehended person to perform a confidential meeting with such person.

77. As prescribed by the paragraph 9 of the Procedure of Informing, the refusal of detained person to accept the lawyer appointed by the regional centre should be performed by such person in the presence of that lawyer in a form of written application. Copy of such application should be submitted by that lawyer to the relevant regional centre.

78. In case when a lawyer appointed by the regional centre for provision free secondary legal aid does not gain an access to detained person (suspected or accused person) a lawyer shall immediately inform a relevant regional centre about that situation. The regional center, in its turn, on the basis of information received from the appointed lawyer shall prepare and send a letter to the territorial police authority of relevant region (district) or to Main Department of the Ministry of Interior with the requirement to conduct an internal investigation and, if the event of violation is confirmed, to apply appropriate measures of disciplinary affect to individuals for such violations.

79. Verification of the information concerning detained persons shall carry out with regional centers aiming to detect cases of violations of requirements within criminal procedural legislation and Procedure for Informing. Monitoring of official web-sites of the appropriate regional (city) offices within the Ministry of Interior and territorial police units is conducting as well.

80. Regional centers shall quarterly provide information to the Coordinating Centre for Legal Aid Provision concerning cases of violation by competent officials of police authorities of the requirements within criminal procedural legislation and Procedure for Informing as well as disciplinary measures applied to such persons.

81. According to operative information provided by regional centers during the period from 1 December 2013 to 25 June 2017, 344,864 orders for provision free secondary legal aid were issued to lawyers, namely:

- 25,060 to those persons whom administrative detention has been applied;
- 20,203 to persons whom administrative arrest has been applied;
- 82,890 to persons detained on suspicion of having committed an offence and/or those who were applied a preventive measure in the form of being kept in detention;
- 181,011 for conducting legal protection undertaken by designation;
- 15,593 to participate in conducting separate procedural action;
- 6,284 to persons sentenced to deprivation of liberty, restriction of liberty or detention in disciplinary battalion of military officers.

82. Due to professional work of the lawyers who cooperate with regional centers and provide free secondary legal aid in criminal proceedings based on the orders issued to them from 2013 to May 2017 there were:

- Adopted 2,031 judgments of acquittal and/or criminal proceedings which were closed because of the absence of an event or formal elements constituting an offence;
- Fixed approximately 3,000 denials in granting prosecutor's or investigator's application concerning imposition for suspected or accused persons such preventive measure as taking into custody;
- Adopted 18,794 discharges on probation;
- Adopted more than 21,000 impositions of minimal terms of punishment or imposition of more lenient sentence than prescribed by criminal legislation.

83. The system for provision free secondary legal aid operates on 24-hour basis, seven days a week; in all cases lawyers are appointed to detained persons regardless of any influence by law enforcement agencies and judiciary authorities; lawyers should immediately arrive to detained persons (within an hour or in certain cases within six hours from the moment of order issuance); all lawyers participate in advanced training aiming at learning and introduction of the European standards on torture prevention.

84. All lawyers engaged to provide free legal aid are obliged to keep up the Quality Standards for Provision Free Secondary Legal Aid in Criminal Proceedings, approved by the Order of the MoJ of February 25, 2014 No. 386/5 (Quality Standards). Quality Standards determine all necessary actions to be performed by lawyer providing free secondary legal aid, stipulated by international legal instruments and legislation of Ukraine.

85. In particular, the general standard No. 6 stipulates that lawyer shall immediately document injuries, provide medical assistance and forensic medical examination if the appearance or state of the client indicates that he/she was subjected to any form of violence or, inter alia, if this information is based on his/her complaints. Also a lawyer shall reveal any facts of torture or other forms of cruel, inhuman, and degrading treatment concerning his/her client by officers of special police units, pre-trial investigation agencies, penitentiary service and other officials, and shall draw up an appropriate report according to the procedure established by Article 206 of the CPC, submit a written report to the prosecutor's office and file an application containing the relevant statement to investigating judge as well.

86. The lawyer will be brought to civil responsibility in accordance with the legislation and terms of contract in a case of refusing to comply with aforementioned requirements.

87. Additionally, aiming to prevent and combat torture and ill-treatment, Memorandums for Cooperation between the Coordinating Centre for Legal Aid Provision and Parliamentary Commissioner for Human Rights of December 10, 2013 and between The NP and the MoJ of February 12, 2016 were concluded as well. Within the framework of mentioned Memorandums, coordination of attempts of the system for provision free legal aid is carried out by the mentioned authorities and the NPM.

88. To promote more efficient collaboration within the framework of the Memorandum for Cooperation between the Coordinating Centre for Legal Aid Provision and Parliamentary Commissioner for Human Rights, additions to the Memorandum which expand and deepen the areas of cooperation were signed, specifically:

- Termination of practice of detention of persons without proper registration of their status;
- Fighting with "pocket" lawyers;
- Coordination of efforts on ceasing the practice of ill-treatment and torture;
- Involvement of the NPM to monitoring the standards of quality for providing free legal aid.

89. The Coordinating Center for Legal Aid Provision regularly provides training of lawyers with the support of partners. Thus, in 2014, 1,325 lawyers, who were called upon to provide free secondary legal aid on a permanent basis under the contract, upgraded skills; 263 lawyers improved their qualifications, and 459 took part in specialized thematic seminars and training events in 2016 (as of 2015 their number was 2,242).

Subcommittee recommendations

57. **Reiterating the recommendations made in 2011 (see CAT/OP/UKR/1, paras. 76 and 80), the Subcommittee encourages the State party to guarantee that, as a routine matter, all persons undergo a thorough medical examination as soon as they are deprived of liberty. It is recommended that such an examination record:**

(a) **A detainee's medical history, including any allegations of recent violence, torture or ill-treatment;**

(b) **The existence of any discomfort or symptoms;**

(c) **The result of the clinical examination, including a description of any injuries observed and an account of how such injuries were sustained;**

(d) **An indication of whether the whole body was examined;**

(e) **The health professional's conclusion as to whether all recorded elements are consistent.**

58. **The Subcommittee recommends that all medical examinations maintain the principle of medical confidentiality: only medical personnel should be present during the examination. It also recommends that the State party discontinue the practice of performing medical examinations through bars, since such examinations are demeaning by nature and lack the thoroughness envisioned in the Istanbul Protocol.**

59. **The Subcommittee recommends that the State party ensure that all persons deprived of liberty are given a thorough medical examination, regardless of whether they are held in a location officially registered as a place of detention in the State party or not.**

60. **The Subcommittee also recommends that the State party improve its training of medical personnel working in places of detention, particularly on the Istanbul Protocol and other international standards, as well as on the duty to detect and report torture and ill-treatment. If a health professional has grounds for suspecting the existence of torture or ill-treatment, the Subcommittee recommends that this be registered in a national register of allegations of torture and ill-treatment, either with the consent of the examined person (so that the case may be referred to expressly) or, if such consent is refused, as an anonymous case. In addition, the Subcommittee recommends that health professionals immediately report suspicions of torture and ill-treatment to the appropriate authorities, with the consent of the detainee, so that an independent examination may be conducted in accordance with the Istanbul Protocol. The confidential medical report should be made available to the detainee and to his or her counsel.**

61. **Finally, the Subcommittee recommends that medical care and assistance be guaranteed and accessible to all detained persons upon their request.**

Response of Ukrainian Government

90. On 13 January 2017 the MoJ delivered to the Interregional Departments on execution of punishments and probation an instruction regarding harmonizing the procedure of conducting medical examinations of sentenced and remand prisoners in line with requirements of international monitoring mechanisms.

91. Paragraphs 1, 2, 3, 4 of Chapter II of the Procedure for providing medical support for sentenced prisoners which approved by the General Order of the MoJ, MoH of

15.08.2014 No. 1348/5/572 clearly regulate the mechanism of fixation and registration of body injuries revealed on sentenced prisoners upon their arrival to penitentiary institution.

92. Paragraph 2.1 of Chapter 2 of Procedure of coordination of healthcare institutions of the SCES with general healthcare institutions on the provision of medical aid for persons taken into custody regulates mechanism of fixation and registration of body injuries on remand prisoners upon their arrival to the pre-trial detention centres.

93. Mentioned legal acts prescribe conducting of medical examination of sentenced and remand prisoners out of sight and earshot of non-medical staff (if medical employee doesn't wish otherwise in every specific case).

94. Before being placed in THF detained persons undergo a medical examination at the medical institutions of the MoH for detection of diseases, bodily injures and possibility to be held in THF. In case of deterioration of health and need of provision of emergency medical care to persons detained in the THF, ambulance crew is called immediately. Each THF has a separate room for medical care to detainees.

95. The examination of detainees and remand prisoners during placement to THF is carried out. In case of revealing of bodily injures the public prosecutor's office shall be informed. Investigative group shall be called in case of application of illegal actions against detainees by police officers.

Subcommittee recommendations

64. **The Subcommittee recommends that the State party review and reform its system of record-keeping in order to ensure that records are, at all times, comprehensive, accurate, precise and up to date. It is recommended that registers be uniform and accessible to detainees' authorized representatives and next of kin, as well as to the national preventive mechanism. Furthermore, the Subcommittee recommends that the system to be introduced is such that a third party may easily follow the movement, location and well-being of a person in detention without the need to locate and examine numerous files, papers or slips.**

65. **The Subcommittee recommends that the State party keep such records for all persons deprived of their liberty, regardless of whether they are kept in a location officially registered as a place of detention by the State party.**

Response of Ukrainian Government

96. The recording of sentenced prisoners in penitentiary institutions is organized in accordance with the requirements of Article 91 of the CEC and in accordance with the "Instruction on the work of control units (groups, sectors, senior inspectors) of penitentiary institutions and pre-trial detention centres on monitoring the execution of judicial decisions", approved by the Order of the MoJ of 8 June 2012 No. 847/5. Personal profiles are issuing for every prisoner, as well as an information card to which information about individual, committed crime and the name of the court that imposed the sentence is included, as well as data on the day and time of arrival and release from the penitentiary institution.

97. MoJ initiated the establishment of the Unified Register of sentenced and remand prisoners, which provides three independent modules interconnected through channels of process exchange, in particular, the module for the registration and accounting of sentenced and remand prisoners held in penitentiary institutions and pre-trial detention centres, the module for recording information on the health status of sentenced and remand prisoners and module of the system of electronic services for the management of cases of probation subjects. A draft resolution of the Cabinet of Ministers of Ukraine on the establishment of such Unified Register is currently at the stage of consultations with relevant agencies.

98. The NP has introduced an IT-system of custody records, where all of the detainees entering the THF are registered. The system registers the time and circumstances of

detention, all procedural actions, medical assistance and provision of free legal aid. Currently, this IT-system is tested in 135 out of 150 THF in Ukraine. Moreover, all of the premises of THF are equipped with video surveillance.

99. The NP is currently developing Unified Electronic System for Detention and informational IT-system "Convoy" aiming to ensure a full complex of fixation of measures (transfers) with detainees.

Subcommittee recommendation

68. **The Subcommittee recommends that the State party enable family members and others to visit and communicate with persons in pretrial detention centres as a matter of both law and practice. It also recommends that any restrictions imposed on contacts are made only in exceptional circumstances and that the State party ensure that its policy on outside contacts applies equally in all similar institutions, such as in all SIZOs.**

Response of Ukrainian Government

100. In accordance with article 12 of the Law of Ukraine "On preliminary detention" and the Internal Regulations of Pre-Trial Detention Centres, the visits of prisoners with relatives or other persons is provided by administration of the pre-trial detention centre only with the written permission of the investigator or the court conducting the criminal proceedings, at least three times a month. The duration of visits is set between one and four hours. In accordance with the current legislation remand prisoners are not entitled to make phone conversations.

101. Draft law of Ukraine (reg. No. 2291a of 06 July 2015) "On amending Law on preliminary detention for the implementation of certain Council of Europe standards" provides that remand prisoners have the right on the visit of relatives or other persons at least once for seven days in case of absence of a decision of the investigator or the court conducting criminal proceedings on the prohibition of visits. (Except for visits with lawyer, for which such a ban is not allowed). The same draft law stipulates that remand prisoners may make phone conversations with relatives or other persons, as well as with enterprises, institutions, organizations, including by mobile networks, in case of absence of a decision of the investigator or the court conducting criminal proceedings on the prohibition of phone calls. (Except for calls and correspondence with lawyer, for which such a ban is not allowed). Today the draft law is awaiting the second reading in the Parliament.

Subcommittee recommendations

72. **The Subcommittee recommends that the State party guarantee the right to submit complaints, both in law and in practice (see CAT/OP/UKR/1, paras. 18-20). It also recommends that detainees be empowered to submit complaints directly and confidentially to administrators in places of detention, to higher-level authorities, as necessary, and to authorities with remedial powers. The Subcommittee encourages the State party to bolster its monitoring and complaints mechanisms by giving such mechanisms the power to grant effective remedies.**

73. **The State party is urged to protect complainants from reprisals and any other form of prejudice.**

Response of Ukrainian Government

102. In accordance with Article 13 of the Law of Ukraine "On preliminary detention" remand prisoners may correspond with relatives and other citizens, as well as with enterprises, institutions, organizations by written permission of the person or body

conducting the criminal proceedings. Sending of letters is carried out at the expense of the remand prisoner trough the pre-trial detention centre administration.

103. The procedure for submission of complaints, applications and letters of remand prisoners, registration and sending them to recipients, and also announcement of the results of their consideration are executed pursuant to Article 13 of the Law "On preliminary detention".

104. The correspondence addressed by remand prisoners to the Ombudsman, the European Court of Human Rights, as well as to other relevant bodies of international organizations to which Ukraine is a party, authorized persons of such international organizations and the public prosecutor's offices shall not be subject to review and shall be sent to the location within one day of the filing. The correspondence received by the prisoners from the abovementioned authorities and persons is not subject to revision. Correspondence, which prisoners address to a lawyer in criminal proceedings is not subject to revision and shall be sent to the location within one day of the filing. The correspondence received by remand prisoners from a lawyer is not subject to revision.

105. In accordance with articles 8, 113 of CEC, sentenced prisoners are allowed to receive and send letters and telegrams at their own expense without limits. Prisoners have the right to apply with proposals, applications and complaints to the administration of penitentiary institutions and authorities, the Ombudsman, the European Court of Human Rights, as well as to other relevant bodies of international organizations to which Ukraine is a party, authorized persons of such international organizations, courts, public prosecutor's offices and other state authorities.

106. Relevant applications (correspondence) are filed to the administration of the penitentiary institution. The administration shall issue a voucher-confirmation about receiving of application (correspondence) to prisoner. Within three days (and in cases stipulated by law, within one day), from the time of issue of the voucher-confirmation, the abovementioned application (correspondence) shall be sent to recipient.

Subcommittee recommendation

74. **Finally, the Subcommittee reiterates its recommendation that the multiple roles of public prosecution be revised in order to enhance the independence and effectiveness of investigations into allegations of torture and ill-treatment (see CAT/OP/UKR/1, para. 55).**

Response of Ukrainian Government

107. On 14 October 2014 the new Law on the Public Prosecutor's Office was adopted. This brought Ukraine up to the international standards in terms of the structure and functions of the Prosecutor General's Office. Prosecutors will have three main functions: public prosecution in criminal cases; representing State interests in civil and commercial cases; and supervising investigations by law enforcement bodies. Prosecutors will continue investigating crimes committed by officials of law enforcement agencies until the full functioning of the SBI.

108. Ukraine has recently formally established an independent SBI to investigate crimes committed by high-ranking officials, judges, prosecutors and law-enforcement officers. In particular, the SBI will be investigating allegations of torture and ill-treatment by police officers and other law-enforcement agencies. The open selection process for the Head of the SBI is currently ongoing.

Subcommittee recommendations

78. **The Subcommittee recommends that the State party ensure that fundamental safeguards, including the right to a lawyer, notification of custody and contact with**

the outside world, are applicable to all detainees, regardless of the reason for or the place of detention.

79. **Given the heightened risk of torture and ill-treatment in undisclosed places of detention, the Subcommittee recommends that the State party cease its use of such places.**

80. **The Subcommittee recommends that the State party guarantee to international and national monitors, including the national preventive mechanism, the United Nations human rights monitoring mission in Ukraine, the Special Monitoring Mission to Ukraine of the Organization for Security and Cooperation in Europe and the International Committee of the Red Cross, full and open access to all places where people are or may be deprived of their liberty, regardless of whether those places have been recognized officially as detention facilities.**

81. **Furthermore, the Subcommittee recommends that the State party ensure that all individuals, including those accused of offences under articles 109–115, 258, 260–261 and 437–438 of the Criminal Code, be tried without undue delay, in accordance with fair trial standards established by international human rights law.**

82. **Recalling the absolute prohibition of torture contained in article 2 (2) of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which states that "no exceptional circumstances whatsoever, whether state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification for torture", the Subcommittee reiterates its recommendation that all allegations of torture and ill-treatment be investigated and prosecuted, and that penalties be imposed that are commensurate with the grave nature of such acts.**

Response of Ukrainian Government

109. Penitentiary institutions and pre-trial detention centres are taking measures to prevent any restrictions concerning remand and sentenced prisoners, regardless of the reasons for their detention or conviction.

110. Penitentiary institutions and pre-trial detention centres provide full and unimpeded access into all places of deprivation of liberty where remand and sentenced prisoners are held to international and national observers, including the NPM, the United Nations Human Rights Monitoring Mission in Ukraine, the OSCE Special Monitoring Mission and International Committee of the Red Cross.

111. Draft law on ensuring unrestricted and full access of International Committee of the Red Cross representatives to remand prisoners is awaiting the second reading in the Parliament. The draft law establishes the right of the International Committee of the Red Cross to visit remand prisoners with the notification of the investigator or the court freely and without limits.

112. Draft law on amending Laws of Ukraine "On preliminary detention" and "On the Security Service of Ukraine" on functioning of pre-trial detention centres is registered in the Parliament.

Subcommittee recommendations

85. **The Subcommittee reiterates its recommendation that the State party improve the material conditions in cells, including in respect of water and sanitation, and that it remedy the lack of activities for persons serving a life sentence (see CAT/OP/UKR/1, para. 132).**

86. **The Subcommittee recommends that the State party reform the regime applied to persons serving a life sentence so that they are not uniformly punished in excess of what their sentence requires. It also recommends that such prisoners, like other**

detainees, serve their sentence according to a treatment plan designed on the basis of an individual security assessment.

Response of Ukrainian Government

113. During 2015–2016 were conducted reconstructions and repairs of maximum security sectors for prisoners sentenced to life imprisonment in which adequate living conditions were created, including water and sanitary. In certain penitentiary institutions such repairs will be carried out in 2018 after receiving budget funding.

114. In order to attract life-sentenced prisoners to a wide range of activities, the following work is carried out:

- For those who do not have secondary education, relevant consulting centres are created where they receive general secondary education. Also life-sentenced prisoners gain distance education;
- Prisoners are attracted to work taking into consideration requirements of their holding in cell-type accommodation;
- After having served five years in penitentiary institution, prisoners at their personal request can join to group activities of educational, cultural and sports-health nature;
- Prisoners have the opportunity to hold religious services (including within separated premise located in the territory of a maximum security level sector).

115. According to the Article 1511 of the CEC the change of the conditions of detention of the life-sentenced prisoners is carried out depending on the behaviour of the life-sentenced prisoners and his/her attitude to work (in the case of its presence) as well as education.

116. Conditions for the serving of sentence may change within a single colony or life-sentenced prisoners may be transferred to the colony of another type. The life-sentenced prisoners can be transferred from the building of the cell type, in which two persons are kept, to multi-room building of the cell type of a colony with the maximum security level with granting the permission to participate in group activities of educational, cultural and sports-recreational nature but after the actual serving in such premises not less than five years of the term of punishment; life-sentenced prisoners may be transferred from the multi-room building of the cell type to the usual accommodation of the colony with the maximum security level in case of actual serving in such building not less than five years of the term of the punishment.

117. In 2019 life-sentenced prisoners will obtain the right to change the conditions of imprisonment through the transfer to general accommodation premises.

118. Amendments to Internal Regulations of Pre-Trial Detention Centres of the SCES provide the possibility to attend gym, and if possible, change the frequency of walks by dividing it into two parts.

119. The draft new Internal Regulations of Penitentiary Institutions provide the possibility of creating amateur organizations among life-sentenced prisoners.

120. MoJ is developing a legal act on conducting an individual risks assessment of remand and sentenced prisoners.

121. All inspected penitentiary institutions are public institutions funded from the general fund of the State Budget. Expenditures for repairs in these facilities are not provided in current year. Additional funds are needed to bring the conditions of detention in line with the standards.

122. During the preparation of the draft Law of Ukraine "On the State Budget of Ukraine for 2018" proposals will be made for allocating the necessary funds for the construction, reconstruction and capital repairs of the SCES institutions.

Subcommittee recommendations:

89. **The Subcommittee recommends that the State party evaluate its system of transfers to ensure that transfers are made only after appropriate justifications and that they do not result in detainees being held in short-term detention centres, such as ITTs, for lengthy periods. The Subcommittee also recommends that the State party guarantee that fundamental safeguards, including access to the outside world, legal counsel and medical care, are not unnecessarily interrupted by frequent transfers.**

90. **The Subcommittee recommends that the State party replace vehicles lacking sufficient space and ventilation. It also recommends that it discontinue the use of full metal cages, which endangers detainees in transport. The Subcommittee further recommends that the State party provide detainees with the food and water to which they are entitled while deprived of their liberty.**

Response of Ukrainian Government

123. Transferring of remand prisoners from pre-trial detention centres to police ITH is carrying out according to the criminal procedural legislation. In accordance with Internal Regulations of Pre-Trial Detention Centres, all remand and sentenced prisoners are provided with dry-goods and water during investigative actions out of pre-trial detention centres.

124. New standards of nutrition for sentenced and remand prisoners make provision on food supplement during their participation in criminal proceedings.

125. The draft Internal Regulations of Pre-Trial Detention Centres provides that remand and sentenced prisoners before transferring for participation in criminal proceedings out of pre-trial detention centres must receive set of food according to provisions of national legislation.

126. While having received food (or having rejected it) remand or sentenced prisoners shall sign in the register of recoding fresh rations, which issued to remand or sentenced prisoners before transferring for participation in criminal proceedings out of pre-trial detention centres. Rejection of remand or sentenced prisoners to sign in the register of recoding fresh rations should be noted.

127. Works on the developing new specialized vehicles for transferring detained and remand persons is now under way by the NP together with the State scientific research institute within the Ministry of Interior. The main criteria of such vehicles is safely holding and comfort conditions for detainees during their transferring. Issue on procurement of such vehicles is currently addressing.

Subcommittee recommendations

94. **The Subcommittee recommends that the State party adapt units accommodating mothers and children to enhance familial bonding between detained mothers and their children, as well as between them and their visitors. The Subcommittee also recommends that pregnant women be accommodated in renovated facilities in order to maintain both their privacy and their health.**

95. **The Subcommittee further recommends that the State party ensure the provision of appropriate psychological care to pregnant women and new mothers to reduce the risk of psychological suffering and to minimize the negative effects of detention on children. The State party should provide additional counselling, health-care treatment and medication, as needed.**

96. **Similarly, the Subcommittee recommends that the State party reorganize the mother and baby unit in Chornomorsk, using the Chernihiv unit as a model, so that mothers and babies may live together in appropriate facilities. It also recommends that mothers and children be separated only in cases of acute medical need and that**

decisions about such separations be made on a case-by-case basis, keeping in mind the best interests of the mother and child. Furthermore, the Subcommittee recommends that the State party increase resources to these units in order to minimize fiscal dependency on outside donors.

97. **The Subcommittee requests that the State party urgently address reported ill-treatment of women in the Chornomorsk mother and baby unit. The State party is encouraged to strengthen oversight of that unit and to guarantee effective remedies as a result, including the removal of abusive staff. The Subcommittee recommends that protection against reprisals be guaranteed to ensure the accuracy of information received by oversight mechanisms.**

Response of Ukrainian Government

128. There are two penitentiary institutions in Ukraine where sentenced women are held, and equipped with baby units: Chornomorska Colony (No. 74) and Chernihiv Colony (No. 44). The administration of abovementioned penitentiary institutions adheres international standards for increasing the time spent with the child.

129. In the Chernihiv Colony (No. 44) sentenced women live with their children. The relevant conditions were created with the assistance of the Government of the Swiss Confederation within the framework of the implementation of the relevant project.

130. In the Chornomorska Colony (No. 74), due to absence of separate dormitory, sentenced women do not live with their children; however, they have the opportunity to attend them at any time, except during general measures prescribed by daily routine of penitentiary institution. Creation of conditions similar to those existing in the Chernihiv Colony (No. 44) is impossible for now due to the lack of financial resources.

131. Administrations of both institutions carry out educational work on the proper execution of maternity responsibilities by the sentenced women, who have underage children, with the involvement of representatives of state and non-governmental organizations. Women learn practical skills in raising a young child and in protection of the rights of the child after the release from the institution.

132. Treatment of sentenced women, including pregnant, in penitentiary institutions and transferring them for treatment to general health care institutions is carried out on general grounds and regulated by the Procedure for the provision of medical care to the sentenced to imprisonment, approved by a joint order of the MoJ, MoH No. 1348/5/572.

133. Internal Regulations of Penitentiary Institutions establish provision free of charge food, clothing, footwear, laundry, utilities services for sentenced women who are at least on the four month of pregnancy, unemployed women who have children in baby units on the territory of prisons, women over fifty-five years (if they do not receive a pension).

Subcommittee recommendations

98. **The Subcommittee recommends that the State party introduce alternatives to detention for juveniles, who ought to be detained only as a measure of last resort. Where detention is absolutely necessary, the Subcommittee recommends that the State party ensure that all juveniles benefit from educational and recreational opportunities, as well as peer interaction, on an equal basis. The Subcommittee recalls that international guidelines envisage separate regimes for juveniles and adults in detention.**

99. **The Subcommittee recommends improvements in terms of hygiene, ventilation and climatic conditions in cells occupied by juveniles, according to international standards. It recommends that facilities for juveniles receive natural light and that the food provided be of nutritional value and adequate for health.**

Response of Ukrainian Government

134. According to the article 8 of the Law of Ukraine "On preliminary detention" all remand juveniles are holding separately from adults. In accordance with provisions of Internal Regulations of Pre-Trial Detention Centres of the SCES all remand juveniles are placed in separate buildings, sections or floors, small cells with observation of isolation conditions and according to their age, physical abilities and social degradation.

135. Each category of remand juveniles are holding separately from others, thus sentenced juveniles are holding separately from remand juveniles. Every mass or group event such as: walking, shower, activities at gyms or study courses is conducting according to security conditions and ensuring personal safety for every juvenile.

136. Any possibility for remand juveniles to suffer from sexual or another kind of violence from remand adults is thereby eliminating.

137. Appropriate living and hygiene conditions are establishing for remand juveniles in pre-trial detention centres.

138. Officials and medical workers within pre-trial detention center shall perform daily rounds in order to ensure control of observation of hygiene conditions by juveniles, along with the examination of them for the purpose of identifying bodily injuries. Its results are compulsory documented.

139. Comprehensive system of measures for reformation and re socialization of juveniles in colonies is functioning with the aim of:

- Provision appropriate living conditions for sentenced juveniles compatible with human dignity and standards adopted in society;
- Developing sense of self-esteem by minimizing the negative consequences of imprisonment;
- Supporting social connections with relatives and friends;
- Obtaining education and professional skills by juveniles that will help them to be integrated into society after their release;
- Hygienic, ventilation and climatic conditions in cells where juveniles are held meet the established norms.

140. In 2015 the Law of Ukraine "On probation" was adopted which defines the features of juvenile probation. The juvenile probation is conducted by the probation agency together with authorities and bodies for children's affairs, special institutions providing their social protection and crime prevention. Probation agency contributes to attracting of convicted juveniles' to education and obtaining complete secondary general education. In the framework of the Law on probation implementation and introduction of friendly justice for juveniles:

- Juvenile Probation Centres were established in 11 Ukrainian cities. The main purpose of the Centres is provision of psychological, socially-educational, socially-medical, informational and legal services which promotes the reduction of re-offending level and returning of juveniles to socially-acceptable conditions;
- Compilation of methods and procedures for probation staff for using in practical activity with juvenile offenders and the training programme of specialized course of qualification improvement of probation staff for using in practical activity with juvenile offenders are introduced. Starting from 2015 the training by the programs of probation staff qualification improvement, including juvenile probation direction, was passed by 1,200 probation officials;
- Methodology of risks and needs assessments of juveniles is developed with preparation and management of individual plan of re-socialization of juveniles;
- Procedure of preparation of pre-trial report concerning accused juveniles is developed;

- Programs of overcoming an aggressive behaviour and obtaining of social skills by the juvenile offenders are developed.

141. Interagency Coordinating Council on Juvenile Justice is established. The main goal of the Council is the introduction of inter-institutional platform for the development of juvenile justice which corresponds with child's interests. One of the key tasks of the Council is the introduction of the program of juvenile reconciliation (mediation). Ultimate goal of the Council is amending the legislation to prevent juvenile's incarceration into penitentiary institutions.

142. Through the wider application of alternative to custody preventive measures, particularly, the house arrest, the placement of child under parent's supervision, the number of juveniles held in the places of preliminary detention in the period of 2014–2016 reduced double (in the pre-trial detention centres from 322 to 156 persons, in the temporary holding facilities from 1.552 to 809 persons).

143. The number of juveniles serving their criminal sentences in penitentiary institutions is reducing. In 2015 were held 348 juveniles in the penitentiary institutions, in 2016 — 304 juveniles, as of the middle of 2017 — 294 juveniles.

List of abbreviations

CEC	Criminal Executive Code
CPC	Criminal Procedural Code
MoH	Ministry of Health Care
MoJ	Ministry of Justice
NP	National Police
NPM	National Preventive Mechanism
SBI	State Bureau of Investigations
SCES	State Criminal Enforcement Service
Subcommittee	UN Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
THF	Police temporary holding facilities